SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

October Term, 1955

No. 267

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, JOHN W. NELSON, individually, and as President of UE LOCAL 506, on behalf of himself and all other employees of the General Electric Company similarly situated,

Petitioners,

v.

GENERAL ELECTRIC COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners,

v.

GENERAL ELECTRIC COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

United Electrical, Radio and Machine Workers of America (UE) and John Nelson pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on March 22, 1956.

The Opinions Below

The opinion of the Court below (Appendix A, *infra*, pp. 1a to 4a) is reported at 231 F. 2d 259. The opinion of the District Court (Appendix B, *infra*, pp. 5a to 20a) is reported at 127 F. Supp. 934.

Jurisdiction

The judgment of the Court of Appeals was entered March 22, 1956. The time within which to petition for a writ of certiorari was extended to July 20, 1956 by order of Mr. Justice Black, dated June 15, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

Questions Presented

1. Does the National Labor Relations Act divest courts of jurisdiction over union claims against employers arising from the breach of a collective bargaining contract where the breach of contract is also an unfair labor practice?

2. Is a District Court deprived of jurisdiction which it would otherwise have over a claim for breach of contract, by the fact that it is a union claim that employees have been injured by an employer's breach of a collective bargaining contract?

3. Whether the Senate may foreclose relevant testimony or the production of relevant documents in a proceeding before the Judicial branch of Government merely by the naked assertion of a "privilege" of the Senate, where no question of secrecy of military or international affairs is involved, and where, moreover, the activities inquired into in the Court proceeding are beyond the legitimate scope of activities of the Senate and the Subcommittee.

4. Where District Court jurisdiction is adequately pleaded for at least a part of plaintiff's claim, does the District Court have jurisdiction to settle the whole controversy including that part of plaintiff's claim over which it might not have otherwise had original jurisdiction?

5. In a District Court action for declaratory relief involving the right to a job, is the job right to be valued for

jurisdictional purposes by the face value of the salary and other benefits attached to the job?

6. Where damages from the loss of a job amount on their face to more than $3,000, does the fact that a defense in mitigation of damages may be proved at trial result in the loss of District Court jurisdiction?

7. Whether it is "obvious" cause for discharge that an employee in private industry who has no access to "classified" work properly asserts his privilege against self-incrimination under the Fifth Amendment in response to questions by a Congressional Committee inquiring into his political beliefs and affiliations?

8. Whether an employer violates its contractual duty of full union recognition by the unilateral promulgation of a new term and condition of employment changing previous terms and conditions of employment without previous notice to or negotiations with the union involved?

Constitutional Provisions and Statutes Involved

The Constitutional provision here involved, the Fifth Amendment, provides "No person shall * * * be compelled in any criminal case to be a witness against himself."

Section 10(a) of the National Labor Relations Act (61 Stat. 146, 29 U. S. C. § 160) provides in part as follows:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *"

Title 28 U. S. C. § 1343 (62 Stat. 932, 68 Stat. 1241) provides:

> "The District Courts shall have original jurisdiction of any civil action authorized to be commenced by any person:
>
> "(1) To recover damages for injury to his person or property or because of any deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42. * * *"

Section 1985(3), 42 U. S. C. (R. S. 1980) provides in part:

> "If two or more persons in any State or Territory conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the objects of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privileges of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

Statement of the Case

The Events Giving Rise to This Proceeding

On December 9, 1953, the president of the General Electric Company (hereinafter called the Employer) issued a new regulation providing, in relevant part, for a ninety-day suspension followed by discharge of any of its employees who in a public hearing might, in asserting his privilege under the Fifth Amendment, decline to answer questions directed to any past or present Communist

"affiliations" (Complaint, Exhibit B, J. A. 16-21). This rule was made retroactive for six months prior to its date (J. A. 18). Discharge in either case was to be avoided only by appearance before a Congressional Committee (or other Government authority) within the ninety-day period of suspension and fully answering under oath questions pertaining to any Communist affiliations.

Immediately upon learning of this regulation the United Electrical, Radio & Machine Workers of America (UE) (hereinafter called the Union), collective bargaining representative for a number of the Employer's employees at various situations, asked for a meeting with the Employer (J. A. 85). A meeting was held between the Union and the Employer on December 14, 1953. At this meeting the Union stated that the rule established a new condition of employment which had not been negotiated with the Union and was a violation of the collective bargaining agreement between the Employer and the Union (J. A. 86-87, 438). The Union asked that the rule be withdrawn as a violation of the agreement and that the matter be taken up in collective bargaining negotiations between the parties (J. A. 88-90). The Employer refused (J. A. 122).

Two days after the promulgation of the discharge regulation of December 9, 1953, the Employer suspended—without notice—John Nelson, an employee at its Erie works, who had appeared a month previously before the Subcommittee on Internal Security of the Senate Judiciary Committee. At that hearing Nelson—after stating that he had signed five of the non-Communist affidavits required by the Taft-Hartley Act—had exercised his Fifth Amendment privilege against self-accusation with regard to questions relating to Communist "affiliations" or knowledge of Communist activity (Answer, Ex. B, J. A. 28-43; Pl. Ex. 2). Staber, another Erie employee who had appeared before the same Committee and had likewise exercised his constitutional privilege, was suspended the same day. Other

employees at the Schenectady plant of the Employer were suspended in 1954 as a result of their claim of privilege before the Senate Permanent Sub-committee on Investigations of the Committee on Government Operations, headed by Senator McCarthy.

The Union filed grievances protesting the suspensions at Erie and Schenectady and grievance meetings were had between the local unions and local management and then at the national level in New York between the Union and the Employer (J. A. 93, 99). During all these discussions the Employer representatives adamantly refused to consider any facts other than that the employees had asserted their Fifth Amendment rights (J. A. 94, 161-162, 163). Each employee was discharged as his ninety-day suspension expired. As a consequence, they lost valuable rights established by the Union contract (Complaint, Ex. A), including seniority rights, pension rights at age 65, and insurance (J. A. 168-178).

The work done by the Employer for the Government upon contract involving "classified" information had at all times been subject to security regulations established by the Department of Defense (Complaint, Ex. B; J. A. 16-17). None of the employees here had been employed or had access to classified work. There had been no classified work at the Erie plant, where Nelson was employed, since approximately the end of World War II (J. A. 149-150).

Since 1950 the Employer had recommended to Government agencies that such agencies should determine and direct when an employee should be excluded from employment on civilian as well as classified military work. These recommendations were rejected by the Government agencies (J. A. 785).

The Contract Provisions

The contract provisions mainly involved, Articles I and XV, are set out in Appendix C, page —, *infra*. Article I, "Union Recognition", provides for full and unqualified recognition of the union as the collective bargaining agent for the employees it represented. Article XV, "Grievance Procedure", outlines a three level grievance procedure for the handling of individual grievances. Article XV(3), "Procedure for Disciplinary Cases", provides for one week's notice before any penalty may be imposed "except for discharge for obvious cause," and that employees should be reimbursed for loss of wages "in the event it is determined that an employee has been improperly penalized."

The Proceedings Below

The Petitioners here brought suit against the Employer in the District Court for the District of Columbia. The Union charged that the Employer had breached the Recognition, Grievance and Discharge provisions of the union contract (Articles I, XV and XV(3)) by the unilateral promulgation of the discharge regulation, by summarily discharging employees without "obvious cause" solely because of their assertion of the Fifth Amendment privilege, and by adamantly refusing to consider any fact in grievance negotiations on the discharge other than whether or not the employees involved came within the four corners of the regulation.

Nelson sued, both for himself and as representative of other employees affected by the regulation, for declaratory judgment as to his right to his job, damages and injunctive relief. Nelson rested his claim both upon the contract and upon the Civil Rights Acts (42 U. S. C. 1985 (3)), alleging that the regulation was promulgated and the discharges were made as a part of a conspiracy to deprive employees of their rights and that he had been injured thereby.

The jurisdiction of the District Court for the District of Columbia was invoked because the Employer was found in the District of Columbia and under Title 29 U. S. C. § 1343, granting District Courts jurisdiction over cases arising under the Civil Rights Acts.

The District Court Decision

The District Court, sitting without a jury, held for the Employer on the merits. It held that the unilateral promulgation of the discharge regulation was not a denial of full recognition to the union; that discharges based upon the assertion of the Fifth Amendment privilege were discharges for obvious cause; and that there was no legitimate room for discussion, in the grievance negotiations on the individual discharges, of any fact other than whether or not the individual employees had exercised their constitutional rights.

With regard to the conspiracy claim the District Court ruled that the plaintiffs had not proven their case. The rulings of the District Court restricting plaintiff's proof are raised here as error.

The Court of Appeals Decision

The Court of Appeals did not rule upon the merits (except as to the Civil Rights claim where it approved the Trial Court ruling) nor did it pass upon the Trial Court's rulings on evidence. Instead it ordered the case dismissed on jurisdictional grounds. The Court of Appeals held as follows:

1. The District Court had no jurisdiction of the Union's claim for breach of the Recognition and Grievance provisions of the contract. Such a breach was an unfair labor practice and within the exclusive primary jurisdiction of the National Labor Relations Board.

2. The District Court had no jurisdiction over the Union's claim based on breach of the discharge provisions

of the contract. Citing the decision of this Court in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, the Court of Appeals ruled that a District Court had no jurisdiction under any jurisdictional statute over a union's claim that employees had been injured by an employer's breach of a collective bargaining contract.

3. The District Court had no jurisdiction of Nelson's claim since it did not appear that if he had not been discharged, he would have availed himself of his job right sufficiently to earn more than $3,000. The Court of Appeals held that Nelson could not count the face value of life insurance which he lost by reason of his discharge for jurisdictional purposes since he might continue the policy individually. The Court did not discuss the insurance protection other than life insurance which Nelson received under the contract.

The Rulings at Trial

At the trial, Petitioners sought to prove their claims of conspiracy by showing a conspiracy between the Employer, its officers and agents, and employees and agents of the Senate Permanent Subcommittee on Investigations. As a part of their proof of this conspiracy, Petitioners sought to adduce relevant evidence from George Anastos and Joseph Juliana, employees of the Subcommittee. Mr. Anastos was asked the following question:

> "Q. Mr. Anastos, did you and Mr. Roy Cohn enter into arrangement with Mr. Stevens and Mr. LaForge, representatives of the General Electric Company, on or about late October or early November 1953 at the Mohawk Club in the City of Schenectady to the effect that General Electric employees would suspend and then discharge any such employees who asserted any constitutional right or

> privilege as a reason for declining to answer questions relating to so-called communist associations?" (J. A. 200).[1]

Counsel for the witness objected to the question, resting his objection upon a special resolution of the Senate which had been passed by that body subsequent to the service of the subpoena and prior to the appearance of the witness (Senate Resolution 329, Court Ex. 1, J. A. 763). The Resolution recited the Senate's general willingness when testimony of its employees was held "needful" in court "to take such order thereon as will promote the ends of justice consistently with the rights and privileges of the Senate." After reciting the facts of the subpoena, the Resolution then directed that the witness Anastos should:

> "Decline to testify on any other matters including, but not limited to, the investigation or, the disciplining retention or discharge of, any employee or employees of the General Electric Corporation or the agents or representatives of said employee or employees, or any knowledge concerning same, all of which were acquired by said C. George Anastos in his official position, as such testimony is within the privileges of the Senate of the United States; * * *" (J. A. 766).

Counsel for Petitioners asked that the witness be directed to answer and the matter be returned to the Senate for further consideration (J. A. 215). The Trial Court upheld the objection to the question, basing its ruling solely on the Senate Resolution (J. A. 221).

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[1] For the purpose of making his record, the Trial Court permitted counsel for the plaintiffs to propound certain additional questions to the witness, all of which were related to the alleged arrangements arrived at between the witness and other employees of the Senate Committee and representatives of the defendant company. To each of these questions counsel for the witness asserted the "senatorial privilege," and the Trial Court upheld the assertion consistently (J. A. 222-227).

The Trial Court made a similar ruling based upon a similar Senate Resolution (J. A. 768), in refusing to direct the production of the documents called for in a subpoena duces tecum served on the witness Juliana [2] (J. A. 232-233, 236).

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[2] The subpoena duces tecum called for the production of the following documents:

> "(1) All memoranda or copies thereof in the possession of the Special Subcommittee on Investigations of the Senate Committee on Government Operations of any meetings, conferences or discussions had from October 1, 1953, to September 1, 1954, inclusive, between Roy Cohn, George C. Anastos, Francis Carr or any member or other representative or agent of said subcommittee with any officer, representative or agent of the General Electric Company, with respect to the investigation and discipline or discharge of any employee or employees of the General Electric Company for asserting any rights, privileges or immunities of the United States Constitution in declining to answer questions of a congressional investigating committee.
>
> "(2) All written communications or copies thereof in the possession of said subcommittee written from October 1, 1953 to September 1, 1954, inclusive, between Senator Joseph R. McCarthy, Roy Cohn, George C. Anastos, Francis Carr, or any other representative or agent of said subcommittee and any officer, representative or agent of the General Electric Company with respect to the investigation, discipline or discharge of any employee or employees of the General Electric Company for asserting any rights, privileges or immunities of the United States Constitution to answer questions of a Congressional Investigating Committee.
>
> "(3) Stenographic transcripts of hearings conducted by said subcommittee on November 12 and 13, 1953, in Albany, New York" (Pl. Ex. 15).

Reasons for Granting the Writ

The Primary Jurisdiction Question

1. The decision below vesting in the Board exclusive primary jurisdiction over acts which may involve both breaches of contract and unfair labor practices raises an important question of Federal law which has not been, but ought to be, settled by this Court. Moreover, it conflicts with the decision of the Courts of Appeals for the Sixth Circuit, the Third Circuit, the Supreme Judicial Court of Massachusetts, and with holdings by the Board itself.

In *N. L. R. B.* v. *Standard Oil Co.* (C. A. 6, 1950), 196 F. 2d 892, the Court upheld the employer's defense, to an unfair labor practice charge (based upon unilateral change in existing working conditions), that the union involved had not availed itself of its legal remedies under the contract. The two Courts of Appeals thus prescribe mutually exclusive procedures for a case where a breach of contract is also an unfair labor practice.

In *Independent Petroleum Workers of New Jersey* v. *Esso Standard Oil Co.* (C. A. 3, June 26, 1956), — F. 2d —, 38 LRRM 2307, the Court of Appeals held that it had jurisdiction over a union claim for breach of contract based upon an employer refusal to bargain collectively. The Court of Appeals overruled the holding of the District Court that "the dispute and the parties thereto are subject to the exclusive jurisdiction of the National Labor Relations Board.

In *Post Publishing Co.* v. *Cort* (May 29, 1956), — Mass. —, —, NE 2d —, 38 LRRM 2198, 2201, the Supreme Judicial Court refused to stay a contract arbitration [3] founded on a claim of discriminatory discharge. The Court said:

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[3] For the purposes of the question here there is no distinction between arbitration and judicial trial. An arbitration is merely another form of judicial trial. The Employer did not demand arbitration here, although it might have under Article XXV of the contract.

"The further contention of an unfair labor practice, here union activities, should not preclude resort, at least in the first instance, to the procedure voluntarily adopted by the parties in their formal agreement. Decisions of the Supreme Court of the United States have not yet passed upon the jurisdiction of an arbitrator to adjudicate a contract violation which is also an unfair labor practice. 69 Harv. L. Rev. 726. See *Garner* v. *Teamsters, Chauffeurs & Helpers Union Local Union No. 776 (A. F. L.)*, 346 U. S. 485; *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468. And in the absence of a clear expression of congressional intent, we shall not assume a lead in rendering largely useless a common method of expediting settlement of a labor controversy and a method which is approved in congressional declaration of policy. See § 101, 203 (d), of the labor management relations act of 1947, commonly called the Taft-Hartley act; 61 U. S. Sts. at Large, 136, 154; U. S. C. (1946 ed.) Sup. V., Title 29, § 151, 173 (d). We recognize that, as a practical matter, the National Labor Relations Board cannot undertake to determine everything which is sought to be brought before it, and declines to review many cases. 69 Harv. L. Rev. 725, 729 et seq. We cannot believe that Congress intended to create a no man's land where voluntary arbitration is barred and the National Labor Relations Board may be too overburdened to enter. There must be a penumbral zone where an initial tribunal selected by the parties may be permitted to reduce controversies in both number and scope prior to resort to an administrative or judicial tribunal."

The Board itself has rejected the exclusive primary jurisdiction over breach of contract which the decision below would thrust upon it. In *United Telephone Co.*, 112 N. L. R. B. 779, the union charged an unfair labor practice in the employer's unilateral change of contract conditions. The Board dismissed the charge, holding:

"In view of its contractual relations with the Respondents the Union's recourse in this situation was

> to exhaust the possibility of settling the overtime question by negotiation and failing such settlement to seek judicial enforcement of its construction of the contract. The Board is not a proper forum for parties seeking to remedy an alleged breach of contract or to obtain enforcement of its terms."

See also:

> *McDonnell Aircraft Corp.*, 109 N. L. R. B. 930; *Spielberg Mfg. Co.*, 112 N. L. R. B. 1080.

2. As the Board rulings show, the traditional legal remedies for breach of contract should be regarded as "complementary to, rather than in conflict with, the power of the N. L. R. B. to remedy unfair labor practices." Note: 69 Harvard L. Rev. 725, 727. The Report of the House Conferees on the 1947 Amendments demonstrates that such was the congressional intent:

> "Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." [4]

The House Report reflects the basic philosophy of the Act. The signing of a collective bargaining agreement is an objective of the Act as the final step in the bargaining process. *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514. It was the Congressional intent that, once the contract was made, it should be binding on both parties and enforceable according to law. So long as the contract is not contrary to the policies of the Act, it provides the measure governing the parties' relationships. *N. L. R. B.* v. *Sands Mfg. Co.*, 300 U. S. 332; *Timken Roller Bearing Co.* v. *N. L. R. B.* (C. A. 6, 1947), 161 F. 2d 949, 955-956.

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[4] House Conference Report No. 510, p. 42 (80th Cong., 1st Sess.).

The congressional rationale applies most strongly to contract areas which are also included within the scope of the Act, the recognition and no-discrimination clauses of collective agreements. It is these clauses which most urgently require the protection which the traditional legal remedies for breach of contract afford and which the decision below denies. For, it is the main purpose of the collective bargaining agreement to provide "a code for the government of an industrial enterprise." *Campbell* v. *I. A. M.*, 337 U. S. 521, "a framework within which the process of collective bargaining may be carried on" *N. L. R. B.* v. *Highland Park Mfg. Co.* (C. A. 4, 1940), 110 F. 2d 632. The union recognition and no discrimination clauses are therefore the very foundation stone of a labor contract.[5] If they are not enforceable, the whole contract may well be meaningless.

3. The rationale of *Garner* v. *Teamster's Union*, 346 U. S. 485, does not apply here. In *Garner* the grant or denial of the state court remedy, an injunction against picketing, would either have destroyed a right protected by Section 7 of the Act or have permitted conduct forbidden by Section 8(b)(4) of the Act. Conflict of remedies was in-

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[5] "While union protective clauses are not so important to the unions as they were before the passage of the National Labor Relations Act, the historical opposition to unions on the part of a large segment of employers has made union protective clauses a traditional must in collective bargaining negotiations." Hill and Hook: *Management at the Bargaining Table*, pp. 11-12 (McGraw-Hill Book Co. 1945).

"An important section of union agreements is that which outlines the basic relations between the union and the employer: The degree of recognition extended, the method of hiring new employees, the union membership status of regular and newly hired employees, dues collection, the use of the union label, and similar matters." *Union Agreement Provisions*, p. 19 (U. S. Dept. Lab. Bureau of Labor Statistics Bulletin No. 686).

See also *3 Collective Bargaining Negotiations and Contracts* 70:61 (Bureau of National Affairs).

evitable. The Court properly held that the decision in such a case had been given to the Board.

In the case here, however, no such inevitable conflict of remedies is present. Petitioner Union does not seek an injunction, the Board's remedy under the Act. It merely seeks the established legal remedy of declaratory judgment cf. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656. The grant or denial of this relief will not inevitably duplicate the jurisdiction of the Board. The Employer asserts no protected Federal right, analogous to the right to picket in the *Garner* case, which might be destroyed by an incorrect decision. And the Board at all times retains the authority to institute an unfair labor practice proceeding.

The mere possibility of disagreement between the Board and a State or Federal Court is not the determinative factor in deciding the jurisdictional question. *International Longshoreman's and Warehouseman's Union* v. *Juneau Spruce Corp.*, 342 U. S. 237. *United Brick and Clay Workers* v. *Deena Artware, Inc.* (C. A. 6, 1952), 198 F. 2d 637, cf. *N. L. R. B.* v. *Deena Artware, Inc.* (C. A. 6, 1952), 198 F. 2d 645; *N. L. R. B.* v. *Pacific Intermountain Express Co.* (C. A. 8, 1955), 228 F. 2d 170. Such a possibility exists in every action on a union contract. "[F]ederal law is, in certain respects, in the background of any action on a collective bargaining agreement affecting commerce * * *" *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437, 451. It is well established that an employer's own breach of contract can be a defense in a court proceeding to its action for breach of contract even though the employer's breach of contract be also an unfair labor practice. *Boeing Airplane Co.* v. *Aeronautical Industrial District* (D. C. Wash., 1950), 91 F. Supp. 596, 608, aff'd 188 Fed. 356, cert. den. 342 U. S. 821, cf. *Mastro Plastics Corp.* v. *N. L. R. B.*, 350 U. S. 270.

Likewise inapposite is this Court's ruling (relied upon below) in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 307 U. S. 261, 264, that only the Board might prevent unfair labor practices. That statement has reference only to the protection of rights created by the Act. It does not apply to rights which arise out of contract and over which the Board has no jurisdiction.

4. The decision below threatens serious harm to industrial stability, the fundamental purpose served by the Act. Under the common scheme of labor contracts the employer pledges itself contractually to perform a number of duties which are also laid upon it by the Act (union recognition, no discrimination, no lock-out, sixty-day notice of contract termination, etc.). These promises are conditions concurrent to the no-strike promise of the union. *Boeing Airplane Co.* v. *I. A. M., supra; Mastro Plastics Corp.* v. *N. L. R. B., supra; Kingston Trap Rock Co.* v. *International Union of Operating Engineers*, 129 N. J. Eq. 570, 19 A. 2d 661. *Winter* v. *Lefkowitz* (Sup. Ct. Kings Cty., 1938), 6 N. Y. Supp. 2d 184 (not officially reported). The decision below, by destroying the promise for which the no-strike pledge is exchanged, destroys the foundation of that pledge and releases the unions from their no-strike obligation, a strange result under an Act which explicitly proclaims as its purpose the avoidance of industrial strife.

The Misinterpretation of *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*

5. The Court below misread this Court's decision in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp. supra*, as depriving District Courts of jurisdiction over all union contract claims involving employee's rights. It therefore ruled out the Union claim based upon the discharge provisions of the contract. This is plainly incorrect. The *Westinghouse* case merely holds that § 301 of the Taft-Hartley Act does not confer any new jurisdic-

tion over union claims for breach of contract. It does not destroy such jurisdiction otherwise existing by reason of diversity of citizenship or the District of Columbia Code. The misinterpretation of the Court below should be promptly corrected lest it work further mischief in labor-management relations and narrow still further the limited remedies of unions seeking to enforce their contracts. See Wyle: *Unions in Search of a Forum to Enforce Contracts*, 7 Lab. L. J. 425.

The opinions in the *Westinghouse* case make it clear that this Court felt that, under customary jurisdictional standards, a union was a logical and proper party to seek enforcement of its contract. Mr. Justice Frankfurter, speaking for himself and Justices Burton and Minton, pointed out that any other policy would defeat the natural expectations of the parties and result in aggravation rather than mitigation of industrial warfare (348 U. S. at pp. 456-458). And Mr. Justice Douglas (Mr. Justice Black concurring) stated:

> "What the union obtains in the collective agreement it should be entitled to enforce or defend in the forums which have been provided. When we disallow that standing, we fail to keep the law abreast of the industrial developments of this age" (348 U. S. at p. 467).

The decision below is also in conflict with the decisions of other Courts of Appeals prior to the *Westinghouse* case, which have upheld the rights of unions to enforce their contracts in the Federal forum. *System Federation No. 59* v. *Louisiana & A. Ry. Co.* (C. A. 5, 1941), 119 F. 2d 509, cert. den. 314 U. S. 656. See also *Milk Wagon Drivers' Union* v. *Associated Milk Dealers Inc.* (D. C. Ill.), 42 F. Supp. 584. Cf. *MacKay* v. *Loew's Inc.* (C. A. 9, 1950), 182 F. 2d 170, 172, cert. den. 330 U. S. 828.

The Union's claim for breach of the discharge clause clearly met the jurisdictional requirements of the District

of Columbia Code if the interpretation given the *Westinghouse* case below be disregarded. The Union loss of the promised performance is not capable of monetary valuation and the District Court is not deprived of jurisdiction by the financial limitation of par. 11-755 of the District of Columbia Code. *Klepinger* v. *Rhodes* (C. A. D. C. 1944), 78 App. D. C. 340, 140 F. 2d 697. *Eigen* v. *Lamson* (C. A. D. C. 1949), — App. D. C. —, 179 F. 2d 56. Moreover, the discharge of the eight employees whom the record shows have already been discharged as a result of the Employer's breach involves many thousands of dollars in wages and valuable rights which each have lost under the contract (J. A. 177-178).

The Senate "Privilege"

6. The ruling of the Trial Court, sustaining objections to highly relevant evidence upon the naked assertion of an alleged "privilege" of the Senate, abdicated its Constitutional judicial function of examining the facts and deciding for itself the validity of the privilege asserted. In *Kilbourne* v. *Thompson*, 103 U. S. 168, 186, this Court described the Court's duty as follows:

> "[W]hen the rights of the citizen are at stake in a court of justice, it must, if these [Congresssional] privileges are set up to his prejudice, examine for itself into the nature and character of those laws, and decide upon their extent and effect upon the rights of the parties before the court."

The Trial Court rulings encourage encroachments upon the rights of citizens which would be immune to judicial inquiry. As Professor Wigmore points out:

> "The truth cannot be escaped that a court which abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish to bureaucratic officials too ample opportunities for abusing the privilege. The lawful

> limits of the privilege are extensible beyond any control if its applicability is left to the determination of the very officials whose interest it may be to shield a wrong-doing under the privileges. Both principle and policy demand that the determination of the privilege shall be for the court; and this has been insisted upon by the highest judicial personages both in England and in the United States" (8 Wigmore, Sec. 2379, p. 799).

The rulings strike deeply at the Petitioners' right to their day in court and a full and fair hearing. They limited Petitioner Nelson's proof of his case to the testimony of witnesses who were employees of the Defendant. Especially in a case of this nature, involving a possible violation of the Civil Rights Acts, Nelson should have been given full opportunity to prove his case by the testimony of other persons involved in the situation and from public documents.

The very concept of a general Congressional "privilege" of secrecy whose validity a court may not question is contrary to our constitutional system. Moreover, even if such a Congressional privilege existed, the questions asked and documents sought at the trial could not be within it. An answer—whether "yes" or "no"—to the question posed the witness Anastos[5a] could not have revealed any activity within the Legislative power. An arrangement with a private employer to accomplish the discharge of any employee who might assert a Constitutional privilege lies without the legislative powers of Con-

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[5a] "Q. Mr. Anastos, did you and Mr. Roy Cohn enter into arrangement with Mr. Stevens and Mr. LaForge, representatives of the General Electric Company, on or about late October or early November 1953 at the Mohawk Club in the City of Schenectady to the effect that General Electric employees would suspend and then discharge any such employees who asserted any constitutional right or privilege as a reason for declining to answer questions relating to so-called communist associations?" (J. A. 200).

gress and beyond the jurisdiction of the Committee.[6] Only recently, in *Quinn* v. *U. S.*, 349 U. S. 155, this Court has reaffirmed the traditional doctrine that the implied powers of Congress are limited by its express legislative powers. If the employees of the Senate Committee were in fact engaged in the activities suggested by the questions asked, then they were acting beyond their powers and no Congressional "privilege" extended to the information sought.

7. Historically, Congress itself has not claimed such an absolute privilege as the Trial Court recognized, and the Senate did not assert such an absolute privilege here. All that the Senate Resolution did was to interpose a preliminary objection that private parties should not be permitted access to the testimony and documents prior to the Court's determination that the material sought was "needful." The Trial Court's refusal to make such a ruling was in error.

6 Cannon's Precedents, p. 826, Par. 587, reports general Congressional practice as follows:

> "Permission to remove from their place of file or custody any documents or papers was denied by the House, but the court was afforded facilities for making certified copies. This seems to have been the

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[6] The Committee is given jurisdiction as follows: (Legislative Reorganization Act of 1946, Sec. 102(g), 60 Stat. 816)

"(2) Such committee shall have the duty of—

"(A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

"(B) studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

"(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

"(D) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member."

> uniform practice in respect to subpoenaes duces tecum issued by a court upon the clerk of the House to produce in court original papers from the files of the House."

The Senate Resolution here evidences no intention to depart from precedent. S. Res. 329 [7] provides in part:

> "RESOLVED, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that testimony of an employee of the Senate of the United States is needful for use in any court of justice or before any judge or such legal officer for the promotion of justice and, further, such testimony may involve documents, communications, conversations, and matters related thereto under the control of or in the possession of the Senate of the United States, the Senate of the United States will take such order thereon as will promote the ends of justice consistently with the privileges and rights of the Senate" (J. A. 765-766).

At most, therefore, the Senate Resolutions could be interpreted as requesting a ruling upon the need for the evidence sought so that the Senate might have the Court's view before finally deciding whether to assert a privilege. The refusal of the Trial Court to make such a ruling was an abdication of its function. It deprived Petitioner of his right to a full and fair trial.

Proof of a conspiracy to violate civil rights is at best difficult by the very nature of such conspiracies. The Attorney General has only recently recognized the need for strengthening, rather than weakening, existing laws in this area. (*New York Times*, April 10, 1956, pp. 1, 20). The rulings below throw an additional block in the way of the enforcement of the laws when it is common knowledge that

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[7] S. Res. 330 has similar language (J. A. 768).

conspiracies against Civil Rights are becoming more widespread than at any time since the passage of the Civil Rights Acts.

District Court Jurisdiction to Settle the Whole Controversy

8. The ruling below ignores the established rule that once District Court jurisdiction attaches the Trial Court has power to settle the whole controversy, whether the particular claim upon which jurisdiction rests be ultimately upheld, denied, or by-passed. *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175; *Hurn* v. *Oursler*, 289 U. S. 238; *Hillsborough Township, Somerset County* v. *Cromwell*, 326 U. S. 620. Unquestionably, the District Court had jurisdiction here of Nelson's claim based upon the Civil Rights Act since there is no monetary limitation upon jurisdiction over such a claim. *Hague* v. *C. I. O.*, 307 U. S. 496. Once the District Court was siesed of the case it could, as it did, dispose of it entirely. The Court below erred in remanding the case for dismissal without full consideration of the merits of Nelson's claim.

In the context of a claim under the Civil Rights Act this question expands beyond the level of a technical, if important, problem of Federal jurisdiction. Claims for redress under the Civil Rights Acts customarily also involve claims resting upon state law. The persons whom the Civil Rights Acts is designed to protect are often impoverished and unable to undertake extensive litigations.[8] Their complaint that they have been wronged may often be a just one and involve transgressions within the spirit of the Civil Rights Acts, even if the case at trial does not meet every technical stringency of those Acts. The rulings below would remit

[8] The Attorney General has seemed to recognize this problem in proposing legislation which would authorize the Attorney General to initiate civil action to protect the rights envisaged by 42 U. S. C., Section 1985 (N. Y. Times, April 10, 1956, pp. 1, 20).

such plaintiffs to another lengthy and expensive litigation before a local court perhaps less than sympathetic to claims involving civil rights.

The Value of Nelson's Job Right

9. The decision below conflicts with applicable decisions of this Court, and of other Courts of Appeals as to the standard for valuation of Nelson's job right. Had Nelson not been discharged he would have been entitled to earn more than $3,000 as an employee of the company before the end of the contract. Under the holdings of this Court and other Courts of Appeals that sum is the proper measure of valuation of Nelson's action for a declaratory judgment as to his right in his job.

In *Smith* v. *Whitney*, 116 U. S. 167, 173, this Court held that the jurisdictional requirements were met where a job right was involved "if the salary during the term of office would exceed the sum named in the statute defining jurisdiction." In *Nord* v. *Griffin* (C. A. 7, 1936) 86 F. 2d 481, the Court of Appeals likewise held that a job right should be valued in terms of the right which the employee lost. Even where a fixed term of employment was not involved a Court of Appeals has valued the job right in terms of the "probability" of possible income from the job. *Marshall* v. *Crotty* (C. A. 1, 1950) 185 F. 2d 622. Cf. *Carroll* v. *Somervell* (C. A. 2, 1949) 116 F. 2d 918.

Moreover, the Court below ignored the value of the insurance benefits (other than life insurance) lost by Nelson as a consequence of his discharge, benefits which on their face totalled more than $5,476.00.[9] The face value of insurance policies is the proper measure of the amount in con-

[9] These included a $2,000.00 accidental death policy; $1,001.00 in weekly sickness and accident benefits; $700.00 hospital expense insurance; $1,700.00 for special hospital services, and $175.00 for surgical operations (J. A. 15; Complaint Exhibit A at p. 63).

troversy where the right to the continuance of the policies is in question. *1 Moore's Federal Practice* (1st Ed., 1948) 527-528, *Bell* v. *Phila. Life Insurance Co.* (C. A. 4, 1935) 78 F. 2d 322.

The Court below seems to have confused the declaratory judgment and damage remedies. As the cases cited above show, where a remedy other than damages is sought, the value of the right is determinative. Even as far as the damage claim is concerned, however, the District Court would not be deprived of jurisdiction by the existence of a defense in mitigation of damages. In *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 289, this Court held:

> "The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. Nor does the fact that the complaint shows the existence of a valid defense to the claim."

The problem here presented—the evaluation of a job right for purposes of District Court jurisdiction—is an important one. The widespread nature of collective bargaining agreements guarantees that plaintiffs seeking redress for the loss of their jobs will apply to the Federal courts either on diversity or other grounds. The decision below raises serious questions concerning the extent of this jurisdiction. This Court should resolve those questions in accordance with its previous decisions.

The Fifth Amendment Privilege

10. The failure of the Court below to reverse the finding of the District Court, that the discharges based solely upon the assertion of the Fifth Amendment privilege were discharges for "obvious cause," raises an important question of law and conflicts in principle with decisions of this Court. This Court has only recently held in *Slochower* v. *Board of Higher Education*, 350 U. S. 551, that the asser-

tion of the Fifth Amendment privilege does not provide a "reasonable basis" for a State to discharge its employees. *A fortiori,* a discharge based on an assertion of the privilege cannot meet the even more rigorous requirement of the contract here, that there be "obvious cause" for discharge.

"Cause" has long been recognized in the field of industrial relations as a concept providing an objective substantive standard governing the imposition of discipline, incorporating the standards of propriety governing the community.[10] The holdings are nearly unanimous that where, as here, a right of appeal from discharge is given an employee, coupled with provision for reinstatement and back pay in the event the discharge be held improper, an objective standard of "cause" governing discharges is incor-

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[10] Before the First World War, in a decision as Impartial Chairman establishing a "just cause" for discharge standard under the clothing industry protocol, the late Justice Brandeis concluded:

> "We believe that any attempt to define what is fair and reasonable with reference to discharge or in the administration of the shop would in the long run, lead rather to injustices than to justice. What is fair and reasonable all things considered is something which in the absence of specific agreement between the parties must be left to the judgment of men familiar with the particular facts and the facts will vary in particular cases.
>
> "We are confronted with a situation which is similar to that with which courts and juries have constantly to deal * * * what is reasonable care, * * * what is reasonable notice, and * * * what is reasonable cause for action. Any attempt to codify what is reasonable would have to make provision and take into consideration so many possible conditions and such remote possibilities that the mind of man could not possibly determine in advance the rule to be applied. Indeed, the rules, if determined in advance, would prove so numerous that the mere selection of the rule to be applied would present a difficulty almost insurmountable." Cohen, *Law & Order in Industry,* 266 (1916). (Cited in *Case Law or Free Decision in Grievance Arbitration,* 62 Harv. L. Rev. 118, 122.)

porated into the contract.[11] The addition of "obvious" merely enhances the operative effect of that concept. The justice of the cause must be readily plain and apparent to reasonable men.

The Trial Court failed to apply the clear standards of propriety which this Court has squarely established in *Quinn* v. *U. S.*, 349 U. S. 155 and *Emspak* v. *U. S.*, 349 U. S. 190, for judging the assertion of the Fifth Amendment privilege. The Fifth Amendment privilege is a "great right" associated since its inception with protection against inquisition into heresy. No moral turpitude it attached to its exercise. The privilege is not to be applied "grudgingly," but is to be given the full recognition which its place in the Bill of Rights demands. Indeed, it is precisely at times such as these "when the privilege is under attack by those who wrongfully conceive of it merely as a shield for the guilty—that governmental bodies must be most scrupulous in protecting its exercise."

To maintain, as did the Trial Court (App. B, *infra*, p. 14a), that the discharges were based upon the "effects" of the assertion rather than on the assertion of the privilege itself merely evades this Court's rulings in *Quinn*, *Emspak* and *Schlochower*.[12] The assertion of the privi-

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[11] *Illinois Central R.* v. *Moore* (C. A. 5, 1940), 112 F. 2d 959; *Steadman* v. *Atlantic Coast Line R. Co.* (C. A. 4, 1943), 138 F 2d 691; *Koppal* v. *Transcontinental and Western Air Lines* (C. A. 8, 1952), 199 F. 2d 117, 119; *Olsen* v. *Arabian American Oil Co.* (C. A. 2, 1952), 194 F. 2d 477, 478; *Beeler* v. *Chicago R. I. & P. Ry. Co.* (C. A. 10, 1948), 169 F. 2d 557; *Union Pac. Ry. Co.* v. *Olive* (C. A. 9, 1946), 156 F. 2d 737; *Farris* v. *Alaska Airlines* (D. C. Wash., 1953), 113 F. Supp. 907; *Johnson* v. *American Ry. Express Co.*, 163 S. C. 191, 199, 178 S. E. 671; *Marshall* v. *Charleston & W. C. Ry. Co.*, 164 S. C. 283, 162 S. E. 348; *Coyle* v. *Erie R. Co.*, 142 N. J. Eq. 306, 59 A. 2d 817; *Earle* v. *Illinois Central R. Co.*, 25 Tenn. App. 673, 167 S. W. 2d 15, 29.

[12] As we show later, no "effects" existed which justified the discharges here in question.

lege is always surrounded by "effects." That is precisely its point. Punishment based upon the circumstances allegedly arising from the assertion of the privilege is as sure a destruction of the privilege as action openly based upon the privilege itself.

It is thus no answer for the Employer to assert that it might have lost money had it not discharged the employees here. The Employer had bound itself by the contract not to discharge its employees improperly. When it made that agreement, the Employer surrendered whatever common law right it may have had to act arbitrarily on its own unilateral decision and on the basis of purely financial motives and fears. At that time, it agreed to be governed by the considerations of fairness and justice which govern our society, including the protection which those standards give to the Fifth Amendment privilege. If the Employer is determined nonetheless to breach the contract, then it must be prepared to face the remedies in damages which the law gives to one injured by a breach of contract, a case for which Article XV(3) specifically provides.

The magnitude of the problem extends even beyond the many thousands of General Electric employees whom the Employer would deprive of the privilege which the Constitution guarantees to all. As the statement of Mr. Roy Cohn shows (J. A. 243), most big employers have adopted a policy of discharging employees who assert their privilege as to their political associations. For millions of workers the exercise of their constitutional right has become an act of economic self destruction. The "blacklist" of the heterodox is fast becoming an institutionalized part of our economic society. Cogley: *Report on Blacklisting*, Fund for the Republic (1956). The impact of the new "blacklist" upon the universal union contract prohibition of discharges, except for "cause," is manifestly of high importance in our country.

11. The magnitude of the Trial Court's departure from the rulings of this Court is shown by the ruling that the assertion of the privilege was such an obvious cause for discharge that no other circumstance need be considered in grievance negotiations (App. B, p. 16a, *infra*). It is undisputed that Article XV(3) requires that each case of discipline be considered on its individual merits. Only if we take the view of the Trial Court, can the Employer's adamant refusal to consider any fact beyond the claim of privilege be considered more than a sham performance of its contract. Cf. *Schlochower* v. *Board of Higher Education.*

But, in truth, there was obvious room for grievance discussions in the very grounds upon which the Employer relied to sustain its policy: military security, employee morale, and loss of profits. None of those grounds applied to the employees here.

None of the employees were employed on, or had access to, classified military production. (There had been none in the Erie, Pa., plant where Nelson worked since the end of World War II.) Nelson himself had signed the Taft-Hartley non-communist affidavits five times. The Defense Department does not require screening of employees on non-classified work. Department of Defense, Industrial Personnel Security Review Regulations, February 2, 1955; Government Security and Loyalty Manual (B. N. A.) 25:151.

Equally inapplicable is the Employer's argument that employee morale was impaired by the assertion of the privilege. As the Trial Court recognized (App. B, *infra*, p. 14a), the only evidence of employee dissension was in a plant where none of the employees here involved worked, and involved none of these employees. Nelson, was retained as President of his local after his appearance before the Committee (J. A. 356). Clearly, the morale of the employees

in Nelson's plant was not affected by his claim of privilege (although it may well have been impaired by the arbitrary discharge of their President).

At the trial the Employer could not point to a single sale lost as a result of any of these employees claiming their privilege even though a month had elapsed between Nelson's claim of privilege and his discharge. (The Employer did produce evidence of an "expert" witness, Harris, which purported to show that the Employer had received unfavorable publicity from attacks made against it by Senator McCarthy (J. A. 493-520). This evidence had no relevance either to the adoption of the policy or the individual discharges. The Employer had solidified its projected new policy by the latter half of November, 1953 (J. A. 392). The first of Mr. Harris' reports was not made until December, 1953 (Def. Exs. 21-25). Moreover, no analysis appears to have been made of favorable or unfavorable newspaper reaction to the assertion of their privilege by the employees here, or to the discharge regulation and the discharges thereunder.)

We have argued above that we do not think that, in any event, the assertion of the privilege can, by itself, constitute "obvious cause" for discharge. Certain it is that its assertion is not "obvious cause" for discharge in every case. Each of the discharges here had its own circumstances and, under the contract, the Employer was obligated to discuss each of the discharges in terms of those circumstances. It is the essence of individual grievances that each case must turn on its own "particular facts and the facts will vary in particular cases." [13] As the record shows, the considerations upon which the Employer relied to support the discharge varied (to say the least) in strength and applicability from case to case. The Em-

[13] Mr. Justice Brandeis, op. Cit., fn. 10, *supra*.

ployer, by refusing to consider any of these cases upon their individual merits and being willing to discuss only whether or not the employees involved came within the four corners of its new regulation, breached its obligations under the contract.

The Employer's Breach of the Recognition Clause

12. The Court below erred in failing to reverse the finding of the Trial Court that the Employer had not breached the Union Recognition clause of the contract by the promulgation. The Union Recognition clause clearly requires that the Employer accord full, good faith recognition to the union. *Boeing Airplane Co.* v. *Aeronautical Industrial District, supra.* As numerous decisions of this Court and other courts demonstrate, the unilateral employer action on a subject of bargaining and the Employer's refusal to consider the individual discharges on their merits are a breach of its contractual obligations.

The record is clear that the Employer instituted its discharge regulation without even giving prior notice to the union, much less consulting with it (App. B, p. 8a, *infra*). Such unilateral action is a denial of good faith recognition. *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514; *Mays Department Store* v. *N. L. R. B.*, 326 U. S. 376; *N. L. R. B.* v. *Crompton Highland Mill*, 337 U. S. 217; *Inland Steel Co.* v. *N. L. R. B.* (C. A. 7, 1948), 170 F. 2d 247, cert. den. 336 U. S. 960. Indeed, it is the very negation of true union recognition and merely another form of minority bargaining. *Houde Engineering Corp.*, 1 N. L. R. B. (old), 35 (1934). Only the revocation of the discharge regulation, as requested by the union, could have made good faith compliance with the recognition clause a reality. *General Motors Co.*, 81 N. L. R. B. 779, enf'd (C. A. 2, 1950), 179 F. 2d 221.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: July 18, 1956.

APPENDIX A

Opinion of United States Court of Appeals, District of Columbia Circuit

UNITED STATES COURT OF APPEALS,

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

—o—

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, JOHN W. NELSON, individually, and as President of UE Local 506, on behalf of himself and all other employees of the General Electric Company similarly situated,

v.

GENERAL ELECTRIC COMPANY.

—o—

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided March 22, 1956

Before EDGERTON, Chief Judge, and WASHINGTON and DANAHER, Circuit Judges.

EDGERTON, Chief Judge: Appellant Union, certified representative of a number of General Electric Company employees, and appellant Nelson, a member of the Union, ask declaratory and injunctive relief and damages against appellee General Electric Company. The complaint says the Company violated a collective bargaining contract by adopting and enforcing a rule or "policy" that calls for suspension and discharge of employees who invoke the

Fifth Amendment or refuse to testify, before a Congressional committee investigating Communism. Adoption of this rule is said to be a unilateral change in conditions of employment, in violation of the Company's duty to bargain with the Union. Appellant Nelson was suspended, and later discharged, under the rule.

To say the Company violated its duty to bargain with the Union is to say it committed an unfair labor practice. 61 Stat. 141, 29 U. S. C. Section 158(a)(5). The claim is therefore within the exclusive primary jurisdiction of the National Labor Relations Board. "Congress declares that certain labor practices should be unfair, but it prescribed a particular method by which such practices should be ascertained and prevented. By the express terms of the Act, the Board was made the exclusive agency for that purpose." *Amalgamated Workers* v. *Edison Co.*, 309 U. S. 261, 264. The Labor Management Relations Act of 1947 has not given the courts jurisdiction of unfair labor practice claims. The Board's primary jurisdiction of such claims is still exclusive. *Garner* v. *Teamsters' Union*, 346 U. S. 485.[1]

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[1] The circumstance that the facts alleged in the present complaint, constituting an unfair labor practice, are in the nature of a breach of contract and not, like the facts in the *Garner* case, in the nature of a tort, would not authorize the District Court or this court to create an exception to the *Garner* rule and assert jurisdiction before the Board has been asked to exercise it.

Cf. *Anson* v. *Hiram Walker & Sons*, 222 F. 2d 100, 105 (7th Cir. 1955), cert. denied, 350 U. S. 840 (1955); *United Packinghouse Workers* v. *Wilson & Co.*, 80 F. Supp. 563 (N. D. Ill. 1948); and *United Electrical Workers* v. *Worthington Corp.*, 136 F. Supp. 31 (D. Mass. 1955); also *Textile Workers Union of America* v. *Arista Mills Co.*, 193 F. 2d 529, 533-34 (4th Cir. 1951) and *Reed* v. *Fawick Airflex Co.*, 86 F. Supp. 822 (N. D. Ohio 1949). See Note, 69 Harv. L. Rev. 725 (1956). The House Conference Report on the Taft-Hartley Act (H. R. Rep. No. 510, 80th Cong., 1st Sess.) indicated at page 52 that in some cases there might be a concurrent remedy before the courts and before the Board.

The complaint also says the Company violated a term of the collective bargaining contract that requires notice to be given before penalties are imposed on employees. But a United States District Court has no jurisdiction, under Section 301 of the Labor Management Relations Act, 61 Stat. 156, 29 U. S. C. Section 185, or otherwise, of a union's claim that employees have been injured by an employer's breach of a collective bargaining contract. *Ass'n of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437.

An employee discharged in violation of a collective bargaining contract may have a claim that is judicially enforceable. *Marranzano* v. *Riggs National Bank*, 87 U. S. App. D. C. 195, 184 F. 2d 349 (1950). But the claim is not enforceable in the United States District Court for the District of Columbia unless the amount in controversy exceeds $3,000. Smaller claims are within the exclusive jurisdiction of the Municipal Court for the District of Columbia. D. C. Code (1951) Section 11-755. Appellant Nelson's claim does not meet the District Court's jurisdictional requirement. During the last full year of his employment by the Company, most of his time was spent on Union work for which he was not paid or entitled to be paid by the Company, and his earnings from the Company were $618.51. It does not appear that his Company employment and earnings would have been larger in the future, or that his Company discharge affected his Union employment and earnings. Cf. *Friedman* v. *International Ass'n of Machinists*, 95 U. S. App. D. C. 128, 220 F. 2d 808. Appellants say his discharge deprived him of "the benefits of the insurance protection given under the contract, a matter of $6,000 in life insurance alone", but the record refutes this statement. The contract provides that "The employee whose service with the Company has been terminated may arrange with the Metropolitan Life Insurance Company to continue his group

life insurance under an individual policy without medical examination. However, the Paid-up Life Insurance that the employee may have purchased will continue in effect, or if he prefers he may cancel it and take the cash value".[2]

The complaint says the Company conspired with other persons to deprive the plaintiffs of constitutional rights. We need not consider whether the alleged facts would, if proved, entitle the plaintiffs to relief under the Civil Rights Act, R. S. 1980, 42 U. S. C. Section 1985(3), for the plaintiffs failed to prove any conspiracy. With respect to the Company rule or "policy" the court found, on sufficient evidence, that "Both the decision to issue such a policy and the decision as to its substance were made solely as a Company matter without any consultation or communication with any Government representatives or other persons outside the Company."

The District Court dismissed the complaint on the merits. We think the contract claims should have been dismissed for lack of jurisdiction.

Judgment affirmed in part, vacated in part.

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[2] We do not consider whether, if the contract had not allowed a discharged employee to continue his insurance, its present value could be considered for jurisdictional purposes.

APPENDIX B

Opinion and Order of the District Court

UNITED STATES DISTRICT COURT,

DISTRICT OF COLUMBIA.

—o—

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, JOHN W. NELSON, individually, and as President of UE Local 506, on behalf of himself and all other employees of the General Electric Company similarly situated,

v.

GENERAL ELECTRIC COMPANY.

—o—

Dec. 30, 1954.

McLAUGHLIN, District Judge.

Plaintiffs in this action seek a declaratory judgment, injunctive relief and damages.

The basis of the plaintiffs' claim for relief is the discharge from employment of the individual plaintiff Nelson in accordance with defendant Company's statement of "Policy concerning Admitted Communists, Saboteurs, and Subversives; and Employees who Invoke the Fifth Amendment in Order to Refuse to Testify on such Subject."

Jurisdiction of the Court is invoked under Section 301 of the Labor Management Relations Act of 1947, 29 U. S. C. A. § 185; 42 U. S. C. A. §§ 1983, 1985(3), the Civil Rights Act; and 18 U. S. C. § 241, the section dealing with conspiracy against the rights of citizens.

Appendix B—Opinion and Order of the District Court

On September 15, 1950, the defendant General Electric Company, hereinafter referred to as defendant Company, entered into a collective bargaining agreement with the United Electrical Radio and Machine Workers of America, hereinafter referred to as the Union. This agreement as amended on June 19, 1953, is presently in full force and effect and according to its terms will continue in full force and effect until at least April 15, 1955.

In accordance with Article I of this agreement the defendant Company agreed to recognize the Union as the exclusive bargaining representative of its employees covered by said contract with respect to rates of pay, wages, hours of employment and other conditions of employment.

Defendant Company on December 9, 1953, issued the statement of policy, which forms the basis of this action. This policy provides for the immediate discharge of admitted Communists and saboteurs. It further provides that any employee who has been identified as a Communist by testimony under oath at a public hearing of a Congressional Committee or other government authority and who thereafter has declined to accept an opportunity to testify under oath before such committee or authority or has invoked the Fifth Amendment in refusing to testify concerning Communist affiliations, espionage or sabotage, shall be suspended for a period of 90 days without loss of pay. The penalty is to be imposed on any employee who had pursued either of these courses within the previous six-month period. It further provides that an employee who has been suspended can be reinstated (1) if within the 90-day suspension period he appears before the Congressional Committee or authority and fully answers under oath all questions asked him pertaining to Communist affiliations, espionage or sabotage, and in the course thereof does not admit being a Communist or being engaged in espionage or sabotage; or (2) if he obtains from an accredited security agency

of the United States and furnishes to the Company a certificate or statement that an investigation of the employee had been conducted by the agency and that no evidence was found to indicate that the employee was a Communist or otherwise a risk for employment in an industry essential to national defense. It also provides that if an employee is not entitled to reinstatement in accordance with the above provisions at the end of the 90-day period, he shall be discharged.

The plaintiff Nelson is the President of Local 306 of the Union located at Erie, Pennsylvania. This local represents the employees at the Company's Erie plant. On November 12, 1953, Nelson had appeared before a subcommittee of the Senate Judiciary Committee in response to a subpoena. At this hearing Nelson invoked the Constitutional privilege of the Fifth Amendment in answer to several questions. Two days after the promulgation of the Company's policy, on December 11, 1953, the plaintiff Nelson was suspended for 90 days according to the provisions of the policy. At the end of the 90-day period of suspension he was discharged since he had not qualified for reinstatement in accordance with the terms of the policy statement.

This action was instituted as a result of the discharge of plaintiff Nelson. The remedies prayed for are:

1. By the plaintiff Union—a declaratory judgment that the statement of policy is a violation of the collective bargaining agreement between the Union and the defendant Company.

2. By plaintiff Nelson—an injunction ordering defendant to refrain from discharging him; an order rescinding his notice of suspension and restoring his full seniority rights; an order directing defendant to refrain from dis-

charging any and all other employees similarly situated under the provisions of the statement of policy; a declaratory judgment that the suspension and threatened discharge is illegal; damages in an amount of $50,000; damages to all other employees similarly situated in amounts to be determined by the Court.

According to Article I of the collective bargaining agreement the Union is designated as the exclusive bargaining representative with respect to "conditions of employment".

It is plaintiffs' contention that the statement of policy constituted a new condition of employment and that it should have been negotiated with the Union in accordance with the agreement. Plaintiffs allege that the failure to submit the policy statement to the Union for bargaining constituted a breach of the agreement.

Defendant contends that there is no condition of employment involved but rather the question of discharge. It argues that the right to discharge is an inherent right of an employer and that it has always reserved this right in its agreements with the Union. It further contends that there is no obligation to notify the Union beforehand of the bases for discharge and, consequently, that there has been no violation of the collective bargaining agreement.

The questions posed by these respective contentions rest for determination upon the meaning and effect of the provisions of the contract relied on respectively by the parties, which meaning and effect in turn rest upon the intention of the parties. In the statement of issues made during the trial of the case the above basis for determination of meaning and effect of the contract was agreed upon by counsel for the parties. (Record 18-19, 66.)

Appendix B—Opinion and Order of the District Court

This action was previously before another branch of this Court on a motion to dismiss. In a memorandum opinion denying that motion it was stated:

> "The court does not dispute the defendants' contention that there is an inherent right on the part of the General Electric Company to employ and discharge. The question, however, before the Court at the present time is whether the Defendant Company has bargained away any of its inherent rights by its employment agreement with the plaintiff union. * * *"

[1] An employer's right to employ and discharge whom he pleases, in the absence of any statutory or contractual provision, is unquestioned. As the Court of Appeals, 10th Circuit, said in Odell v. Humble Oil & Refining Co., 201 F. 2d 123, 128, certiorari denied 345 U. S. 941, 942, 73 S. Ct. 833, 97 L. Ed. 1367.

> "It is the universally recognized rule that in the absence of a contract or statutory provisions an employer may discharge an employee without cause or reason or for any cause or reason. * * * (Citing cases.)"

In speaking of the effect of the National Labor Relations Act upon the right of the employer to discharge, the Court in N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, at pages 45-46, 57 S. Ct. 615, at page 628, 81 L. Ed. 893, said:

> "The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled

> to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. * * *"

In the Labor Management Relations Act of 1947, 29 U. S. C. A. § 141 et seq. the right of the employer to discharge for cause was specifically preserved by a provision in Section 10(c), 29 U. S. C. A. § 160(c) to the effect that

> "* * * No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. * * *"

[2] The basic question involved in this action then appears to be whether the defendant bargained away its inherent right of discharging its employees when it executed the collective bargaining agreement.

[3] The answer to this question rests upon an interpretation of the agreement. In Victory Investment Corporation v. Muskogee Electric Traction Co., 10 Cir., 150 F. 2d 889, at page 893, 161 A. L. R. 1436, the rule is announced as follows:

> "The cardinal rule in the interpretation of contracts is to ascertain the mutual intention of the parties at the time their minds met upon the terms of the agreement and to give effect to that intention if it can be done without doing violence to the language used."

See also Bradley v. Washington, Alexandria & Georgetown Steam-Packet Co., 13 Pet. 89, 97, 38 U. S. 89, 97, 10 L. Ed. 72.

Accordingly the Court must determine what these parties intended at the time they executed the agreement. If

it appears that they intended that the discharge of employees covered by the contract should be subject to review by some third party, either by a court or by arbitrator, then the discharge of plaintiff Nelson constitutes a violation of the agreement. If it appears, however, that it was intended that the Company reserved the right to discharge employees and merely agreed that thereafter such discharge should be made the subject of discussion and of bargaining through the grievance mechanism set up in the contract and that determinations arrived at through the operation of that mechanism would be final, then the discharges in question would not violate the agreement, if discussion and bargaining ensued.

There are three sections of the agreement which are immediately involved in the determination of the question as to what the parties intended with regard to discharges. The pertinent sections are Article I(1)[1] regarding Union recognition. Article XV(3)(a)[2] relating to the procedure

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[1] "1. The Company agrees to recognize the Union on behalf of and in conjunction with its Locals for those bargaining units of Company employees for which the Union or any of its Locals, through National Labor Relations Board certifications, is designated as the exclusive collective bargaining representative of employees within such units for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

[2] "(a) Before any penalty is imposed upon any employee following Warning Notices, except for discharge for obvious cause, such employee shall be notified one week in advance during which time he may refer the matter to the Local representative and if the Local so desires, the matter may be negotiated with the Management. If no satisfactory agreement is worked out during the period of such notice, the Management shall retain the right to impose such penalty pending final settlement of the case."

for disciplinary cases, and Article XVI(1)[3] relating to arbitration.

Article XV(3)(a) sets out the rights of the parties with respect to disciplinary discharges. It provides that an employee is entitled to a warning notice and then to a notification one week in advance of any penalty discharge, "except for discharge for obvious cause." The defendant Company by the terms of this section has thus been restricted in its right to discharge but has reserved the right to discharge immediately for "obvious cause."

The agreement does not contain a definition of the term "obvious cause" as used in Article XV(3)(a). The record discloses however (Transcript, pp. 448-451) that the term was inserted in the agreement at the instance of the defendant as a protection of its right to discharge those employees whom it considered undesirable and therefore who should be immediately removed from the plant. The record further discloses (Transcript, pp. 429-434) that offenses for which an employee would be subject to immediate discharge were determined by the Company without prior notice to the Union. An instruction sheet from the Erie Works of the defendant Company (Defendant's Exhibit No. 5) sets out several grounds as bases for immediate discharge, among which are: wilful insubordination, theft, drunkenness, immoral behavior and wilful destruction of company property. It appears that in the issuance of this instruction sheet, at least, the Company determined the grounds for immediate discharge, and that it did not consult the Union in advance of such determination (Tran-

[3] "1. Any grievance which involves the interpretation or application of this Agreement, and which remains unsettled after having been fully processed pursuant to the provisions of Article XV shall be submitted to arbitration upon request of either the Union or the Company provided such request is made within 90 days after the decision of the Company has been given to the Union pursuant to Article XV, Section 1(c) * * *."

script, p. 510). From the foregoing the Court is of the opinion that the conclusion may reasonably be drawn that the Company has taken the position that it would hear Union protests through the grievance mechanism after the discharge had been effected and the Union had been advised of this position.

In view of defendant's right to discharge for obvious cause and the practice that it determined unilaterally what constituted the basis for such a discharge, the Court must determine whether the invocation of the Fifth Amendment privilege by the discharged employees presented such a situation as would justify defendant in immediately discharging them.

[4] According to defendant, "obvious cause" was intended to cover "those things which in the opinion of management made an employee an undesirable employee and therefore one who should be immediately removed from the plant" (Transcript, p. 488). There was testimony that defendant was criticized by its stockholders and customers after its employees had relied upon their Fifth Amendment privilege before Congressional Committees. There was also evidence of unrest among fellow employees, and in one instance of refusal to work on the same job with one of the employees who had refused to testify regarding his Communist affiliations. (Defendant's Exhibits 16 and 17.) It appears to the Court that the threatened loss of good will, displeasure of stockholders and prospective customers, disruption of plant morale and the grave doubts as to the security of employees and its plants, all resulting from the refusal of its employees to testify before Congressional Committees, justified defendant in immediately discharging such employees for obvious cause.

The plaintiffs have argued that the evidence of dissension and impaired morale among fellow employees has no bear-

ing on this proceeding since the individual involved in the only instance cited by defendant was employed at a different plant and was not a member of the plaintiff Union. The Court is of the opinion, however, that evidence of the effects above outlined produced by the refusal of any of the employees of defendant Company to testify, in violation of the interdiction contained in the Company's statement of policy, regardless of plant location or union membership, has a bearing upon the matter of defendant's designation of the offense in question as a ground for immediate discharge and so should be considered.

[5] The next section of the agreement which is involved in the determination of intention is Article I(1). Plaintiffs contend that the statement of policy comes within the meaning of the term "other conditions of employment" as used in that Article and that it should have been negotiated with the Union before being put into effect. Article XV(3)(a) recognizes the right of defendant to discharge for disciplinary reasons and sets out in specific detail the procedure relating to the handling of such discharges. In view of this fact the Court is not persuaded that it was intended by the parties to the agreement that the term "other conditions of employment" as used in Article I(1) should negate the right of the defendant to discharge in accordance with Article XV(3)(a).

[6] Plaintiffs contend that they were entitled to discussions and negotiation with respect to the question of the propriety or the justifiability of discharges under the statement of policy. The Court recognizes that in the usual disciplinary discharge, i.e., for theft, drunkenness, etc., sometimes there are many circumstances to be considered, e.g., guilt or innocence of the act charged; work record; restitution; promise to refrain from such conduct,

and that a consideration of these items sometimes leads to a determination that the discharge was wrongly imposed or that a lesser penalty would be commensurate with the offense. In the instant case, however, the Court is not persuaded that discussion and negotiation would serve any useful purpose.

Following the publication by defendant of the statement of policy, meetings were held between representatives of defendant Company and of the Union at which discussions were had with reference to said statements. In none of the discussions, so far as the record discloses, did the Union challenge the fact that Company employees had invoked the Fifth Amendment in refusing to answer questions before Congressional Committees. At no place in the Union's briefs in support of its position or in argument of counsel for the Union has such a challenge been made. The thrust of the Union's argument is against the Company right, in the circumstances, to discharge an employee who admittedly has thus invoked the Fifth Amendment. Nor in the Court's opinion, in the circumstances, is there cogency in the suggestion that consideration of the work record of the affected employee would be material; or of a promise on his part to refrain from such conduct; or of the imposition of a penalty of lesser degree than suspension and, if applicable, of discharge. As stated elsewhere in this opinion, opportunity was provided by the statement of policy for any employee who had refused to answer questions behind the shield of the Fifth Amendment to relieve himself from the effects of the operation of its discharge provisions by appearing before the pertinent Committee and answering the questions under oath as outlined in the statement of policy or obtaining security clearance.

[7] The complaint of the Union concerning the above discussions is that the Company refused to negotiate. The

record (Transcript, pp. 101, 160, 613) establishes that the Union asked that the defendant Company recede from its position as set forth in the statement of policy. The Court has not been persuaded that it has been demonstrated that the defendant Company refused to negotiate. The invoking of the Fifth Amendment by employees being admitted, there remained only the question or point of whether defendant Company would adhere to or abandon its position. The discussion of that question or point took place. In the Court's opinion that, in the circumstances, constituted negotiation. Indeed the situation raises the question "What further negotiations could take place?" The invoking of the Fifth Amendment by employees had produced the results, elsewhere referred to herein, which were harmful and damaging to the Company. Unlike other offenses or derelictions, the effects of which upon the Company might have been erased or ameliorated by negotiations resulting in the taking of a position by the Company that the offending employee should, in the circumstances, be penalized in a manner less drastic than discharge or be given another chance without immediate penalty, the invoking of the Fifth Amendment was a step which once taken produced the harmful effects complained of, which effects the Company concluded could not be erased or ameliorated without the pursuing of the course left open to the employee so invoking the Amendment in accordance with the provisions of the statement of policy.

[8] Article XVI(1) of the agreement, dealing with arbitration, is the third section of the agreement which is immediately involved in the determination. It is contended by the plaintiff that the discharge under the statement of policy should have been submitted to arbitration in accordance with that section of the collective bargaining agreement. It appears from the record (Transcript, pp. 461-465) that the arbitrability of discharges was discussed by

the parties during several negotiations but that no agreement was ever reached on the point. In view of the disagreement on this point the Court is unable to conclude that it was intended to subject discharges to arbitration.

The plaintiffs claim that there has been a deprivation of the Fifth Amendment rights of those employees discharged as a result of invoking the privilege. There is no claim that the employees were not permitted to invoke the privilege but rather that their discharge because of their reliance upon the privilege violated a constitutional right. The defendant, on the other hand, claims that the protection of the Fifth Amendment does not extend that far. It contends that once a person relies upon the privilege his constitutional guarantee has been fulfilled and he is not entitled to protection from loss of employment.

While discharges as a result of relying upon the Fifth Amendment present a novel question in the field of private employment, there appears to be considerable authority for discharging governmental employees, both Federal and Municipal, for such action.

The Federal Employees Security Program provides that "Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct" is a factor to be considered in the security investigations of Federal employees, Ex. Ord. 10491, 5 U. S. C. A. § 631 note, 18 F. R. 6583.

In Orloff v. Willoughby, 345 U. S. 83, 73 S. Ct. 534, 97 L. Ed. 842, the Supreme Court held that invocation of the Fifth Amendment by a doctor in answer to questions regarding membership in subversive organizations was a sufficient ground for denying him a commission in the Army Medical Corps. In Shlakman v. Board of Higher Education, 282 App. Div. 718, 122 N. Y. S. 2d 286, affirmed 306

N. Y. 532, 119 N. E. 2d 373, it was held that teachers in municipal colleges in New York City were properly discharged under a City Charter provision, as a result of their having invoked the Fifth Amendment in answer to questions regarding present or past membership in the Communist Party. It was held that the Charter provision, which provided for discharge in the case of City employees who invoked the Fifth Amendment, did not abridge the constitutional privilege against self-incrimination. In Christal v. Police Commission of San Francisco, 33 Cal. App. 2d 564, 92 P. 2d 416, where police officers had been dismissed as a result of their reliance upon the Fifth Amendment privilege, it was held that while the officers had a constitutional right to refuse to answer questions regarding bribes or gratuities, they had no constitutional right to remain police officers in the face of this violation of their duty.

Although the persons involved in the cases cited were all in governmental service of one type or another, the Court is not persuaded that a person relinquishes any of his Constitutional rights by virtue of his entry into public service.

[9, 10] The Fifth Amendment guarantee provides "* * * nor shall any person * * * be compelled in any criminal case to be a witness against himself * * *." This Amendment does not guarantee that a person who invokes it will not be subject to any unfavorable inference. Maffie v. United States, 1 Cir., 209 F. 2d 225, 228. The Court concludes that it likewise does not guarantee that the person invoking it shall be continued in his employment. In view of this the Court holds that the discharge of the employees under the Statement of Policy did not constitute an interference with their Constitutional rights.

[11] Plaintiffs assert and rely upon the proposition that in entering into the collective bargaining agreement the parties thereto, i.e., the Union and the Company, agreed that the Company had bargained away its right to discharge employees, in that its right to discharge was no longer unqualified but subject to all the conditions to which conditions of employment were subjected by the provisions of that agreement. It is elementary in an action that the party asserting a proposition has the burden of proof of establishing it. The Court is unable to conclude from the evidence that the plaintiffs have met this burden of proof. The Court thus finds that it was not the intention of the parties at the time they executed the agreement that defendant Company's right to discharge for obvious cause should be impaired by the collective bargaining agreement.

[12] The Court further finds that discharges under the statement of policy were discharges for obvious cause; that the parties did not intend that the discharge of employees covered by the contract should be subject to review by any third party, either Court or arbitrator; that since defendant retained the right to discharge for obvious cause it was not obligated to negotiate with the Union before discharging a person on that ground; that there was no violation of the collective bargaining agreement when the discharge in question was not negotiated with the Union in advance of the issuance of the statement of policy.

[13, 14] In addition to their contentions concerning questions involving the contract, the plaintiffs have also charged that defendant, through its management and officers, conspired with members of the staff of the permanent Subcommittee on Investigation of the Senate Government Operations Committee to deprive the individual plaintiff of his civil rights. It is likewise elementary that the plain-

tiff in a civil conspiracy case has the burden of proving the existence of the conspiracy which it alleges to exist. Upon a consideration of the entire record in this case the Court finds that the plaintiffs have failed to sustain the burden of proving the alleged conspiracy.

For the reasons indicated, the prayers of plaintiffs' complaint are denied.

Counsel for defendant will prepare appropriate findings of fact, conclusions of law and order.

CHARLES F. MCLAUGHLIN,
U. S. D. J.

Dated: February 15, 1955.

Order of the District Court

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, JOHN W. NELSON, individually, and as President of UE Local 506, on behalf of himself and all other employees of the General Electric Company similarly situated,

v.

GENERAL ELECTRIC COMPANY.

—o—

This cause having come on to be heard and after taking evidence, hearing argument of counsel and considering the briefs and memoranda filed by the parties, on the basis of the annexed findings of fact and conclusions of law and the Court's Memorandum of December 30, 1954,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment shall be and hereby is entered for defendant dismissing the complaint with costs.

CHARLES F. McLAUGHLIN,
U. S. D. J.

Dated: February 15, 1955.

Seen:

JOSEPH FORER,
Attorney for Plaintiffs.

APPENDIX C

Contract Provisions

Article I, Union Recognition

1. The Company agrees to recognize the Union on behalf of and in conjunction with its Locals for those bargaining units of Company employees for which the Union or any of its Locals, through National Labor Relations Board certifications, is designated as the exclusive collective bargaining representative of employees within such units for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

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Article XV, Grievance Procedure

1. Any dispute or grievance shall be taken up in accordance with the procedure set forth below. However, either party may, at the appropriate step of the grievance procedure, introduce grievances of a general nature or general questions of interpretation or application of this Agreement. In such instances the grievance procedure shall be considered as fully exhausted after the reply to the grievance is given at Step Three.

(a) Step One

(1) Grievances will be presented to the Foreman by an employee and his Steward or by the Steward. However, a grievance affecting an employee individually may be taken up by the employee involved, if he so desires.

(2) The Foreman shall give his answer to the employee and his Steward jointly, within one working day after the presentation of the grievance or advise them

that additional time is needed, in which event the Foreman shall give his answer within five working days after the presentation of the grievance.

(3) If a settlement is not reached between the Steward and the Foreman, the Local may refer the grievance to two representatives of the Local for a discussion in the Department with representatives of Management for settlement if possible.

(b) Step Two

(1) If no satisfactory settlement is reached at Step One within two weeks after the Foreman's answer is given, the matter may at the opinion of the Local be referred to representatives of the Local and local Management.

(2) Representatives designated by the Local and local Management shall meet within five working days after such referral to Step Two to discuss the matter.

(3) In those cases where it is mutually agreed by Management and Local representatives that an inspection of the job would be helpful in settling the case, a subcommittee of the Local with Management representatives shall be allowed to make an inspection of the job. Local representatives may include the Business Agent or his assistant or officers of the Local.

The Works Manager will meet with the Local rep-representatives by mutual agreement on Step Two cases.

(4) The reply of local Management will be given the Local within five working days after the first meeting provided for in Step Two. This time may be extended by mutual agreement.

(5) If local Management's reply to a dispute or grievance at Step Two is unsatisfactory, the Local may

choose to take the dispute or grievance to Step Three, in which case the Local will notify local Management.

(c) Step Three

(1) If no satisfactory agreement is reached at Step Two, the dispute or grievance may be referred to Step Three, the final step of the grievance procedure, for the consideration of designated representatives of the Union and the Company.

(2) The Union will submit such cases to the Company one week before the meeting takes place between the representatives of the Union and the Company.

(3) Regular monthly meetings will be held between the Union and the Company to dispose of cases submitted by the Union. An emergency meeting on a given grievance will be held within three days after notice by the Union.

(4) The Company will give its final reply to the Union in not more than five days after the initial discussion at Step Three. In emergency meetings, the reply will be given at the close of the meeting. These times may be extended by mutual agreement.

(5) When a Local refers a dispute or grievance at Step Three, the grievance procedure shall be considered as fully exhausted only after the Union advises the Company that the Company's reply at Step Three is unsatisfactory, except in those cases which are submitted to arbitration.

2. Written Replies

On a request, a written reply shall be given to a grievance submitted in writing at any step of the grievance procedure.

3. Procedure for Disciplinary Cases

(a) Before any penalty is imposed upon any employee following Warning Notices, except for discharge for obvious cause, such employee shall be notified one week in advance during which time he may refer the matter to the Local representative and if the Local so desires, the matter may be negotiated with the Management. If no satisfactory agreement is worked out during the period of such notice, the Management shall retain the right to impose such penalty pending final settlement of the case.

(b) In the event it is determined that an employee has been improperly penalized, he will be reimbursed for any loss of wages sustained as a result of the imposition of the penalty.